

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2104 of 1989

For Approval and Signature:

Hon'ble MR. JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

SARLA N SUTARIA

Versus

STATE OF GUJARAT

Appearance:

Shri A.J.Patel, Advocate, for the Petitioner.

Shri T.H.Sompura, Assistant Government Pleader, for the Respondents.

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 17/06/96

ORAL JUDGEMENT

The order passed by and on behalf of the State Government (respondent No.1 herein) on 13th October 1988 as also the order passed by and on its behalf on 10th January 1989 are under challenge in this petition under Articles 226 and 227 of the Constitution of India. By the impugned order of 13th October 1988, the petitioner's application for exemption under section 20 of the Urban Land (Ceiling and Regulation Act) 1976 (the Act for brief) with respect to certain parcels of land bearing survey Nos.637, 638 and 639 admeasuring 5261 square metres, 5969 square metres and 6070 square metres respectively (in all 17300 square metres) situated at village Jambuva within the urban agglomeration of Vadodara (the disputed lands for convenience) came to be rejected. By the order of 10th January 1989, respondent No.1 refused to review its aforesaid earlier order.

2. The facts giving rise to this petition move in a narrow compass. The petitioner wanted to start an industrial unit in the name and style of National Chemical Corporation for manufacture of laboratory chemicals, solvents and electroplating salts in the disputed lands. The production programme was approved by the order passed by and on behalf of the Director of Industries on 6th September 1966 with some minor modifications. Its copy is at Annexure-A to this petition. The N.A.Permission was also granted with respect to the disputed lands by the order passed by the Taluka Development Officer on 19th December 1969. Its copy is at Annexure-C to this petition. The petitioner appears to have taken certain other steps towards implementation of starting its industrial unit. It appears that the disputed lands are abutting on National Highway No.8. The dispute was regarding the margin to be left from the centre of the National Highway for construction activity. It appears that the Collector of Vadodara insited on keeping the margin of 135 square metres whereas the officers of the Public Works Department proposed the margin to be kept of 75 square metres from the centre of the National Highway. That dispute was resolved as late as on 16th February 1979. By that communication, the Collector of Vadodara agreed for keeping the margin of 75 square metres from the centre of the National Highway for raising construction for industrial activities. Its copy is at Annexure-N to this petition. In the meantime, the Act came into force with effect from 17th February 1976. Since the area of the disputed lands was about 17000 square metres and since the ceiling limit prescribed under the Act for the urban agglomeration of Vadodara is 1500 square metres, the petitioner could not have raised any construction

without obtaining exemption under section 20 thereof. Apropos the petitioner made the necessary application. By the order passed by and on behalf of respondent No.1 on 13th October 1988, the petitioner's application for exemption came to be rejected. Its copy is at Annexure-R to this petition. It appears that the petitioner applied for its review on 5th November, 15th November and 20th November 1988. Respondent No.1 refused to review the order at Annexure-R to this petition and an intimation in that regard was given to the petitioner by one communication of 10th January 1989. Its copy is at Annexure-S to this petition. The aggrieved petitioner has thereupon approached this court by means of this application under Articles 226 and 227 of the Constitution of India for questioning the correctness of the aforesaid order at Annexure-R to this petition and the aforesaid communication at Annexure-S to this petition.

3. As rightly submitted by learned Advocate Shri Patel for the petitioner, the impugned order at Annexure-R to this petition suffers from the vice of non-application of mind on the part of its author. It transpires therefrom that only one fact weighed with the author of the impugned order to the effect that no effective steps were taken for nearly ten years for implementation of the production programme as approved by the Director of Industries. It was coupled with the fact that the loan sanctioned by the G.I.I.C was also cancelled some time in 1971. This conclusion was based on one report made by the Industries Commissioner.

4. It does not become clear from the impugned order at Annexure-R to this petition whether or not the aforesaid report made by the Industries Commissioner was given to the petitioner for offering her comments thereon. Since the petitioner has not made any grievance in that regard in the memo of this petition, it is not necessary to dilate upon that aspect of the case.

5. A reference deserves to be made to one communication of 31st March 1983 emanating from the petitioner and addressed to the Industries Commissioner in connection with the exemption application under section 20 of the Act. It appears that as many as 28 documents were annexed therewith. Its copy is at Annexure-P to this petition. That application also showed what steps were taken by the petitioner for establishment of the industrial unit prior to 28th January 1976. It does not become clear from the impugned order at Annexure-R to this petition whether the report

made by the Industries Commissioner included as its annexure or annexures the aforesaid communication of 31st March 1983 along with its annexures. If the aforesaid communication at Annexure-P to this petition was annexed with the report made by the Industries Commissioner, it is a clear case of non-application of mind on the part of the author of the impugned order at Annexure-R to this petition. If the communication at Annexure-P to this petition was not annexed, the author of the order was deprived of the case of the petitioner as reflected thereien. In that case also, the impugned order at Annexure-R to this petition can be said to be suffering from the vice of non-application of mind on the part of its author. In either way of the matter, there is no escape from the conclusion that the impugned order suffers from the infirmity of non-application of mind on the part of its author.

6. The other two grounds in the impugned orders given in support of rejection of the exemption application are quite vague and as vague as vague could be. It is not shown how rejection of the application for exemption would not cause any undue hardship to the petitioner. It is also not shown how the claim for exemption would not be in consonance with section 20 of the Act.

7. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure-R to this petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No.1 for deciding the fate of the petitioner's exemption application according to law preferably within three months from the date of receipt of the writ in this case. It would be open to the petitioner to produce a certified copy of this judgment before the concerned officer of respondent No.1 and, in that case, the time-limit would start from the date of such production of the certified copy of this judgment. It may be mentioned at this stage that, if a copy of the report of the Industries Commissioner as referred to in the impugned order at Annexure-R to this petition is not given to the petitioner, it would be desirable that such report is given to her for offering her comments thereon.

8. In the result, this petition is accepted. The order passed by and on behalf of the State Government (respondent No.1 herein) on 13th October 1988 at Annexure-R to this petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceeding to file and for its fresh decision

according to law in the light of this judgment of mine.
Rule is accordingly made absolute to the aforesaid extent
with no order as to costs.

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